

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

**NATHAN PERKINS**

**Petitioner,**

**-v-**

**WANZA JACKSON, Warden**

**Respondent.**

**Case No. C-3:08-cv-277**

**Judge Thomas M. Rose  
Magistrate Michael R. Merz**

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**ENTRY AND ORDER OVERRULING THE WARDENS OBJECTIONS  
(Doc. #38) TO THE MAGISTRATE JUDGE'S SUPPLEMENTAL REPORT  
AND RECOMMENDATIONS; ADOPTING THE MAGISTRATE  
JUDGE'S SUPPLEMENTAL REPORT AND RECOMMENDATIONS IN  
ITS ENTIRETY(Doc. #36) AND GRANTING A CERTIFICATE OF  
APPEALABILITY ON PERKINS' FIRST AND SECOND GROUNDS FOR  
RELIEF**

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This matter comes before the Court pursuant to Respondent Wanza Jackson's ("the Warden's") Objections to Magistrate Judge Michael R. Merz's Supplemental Report and Recommendations regarding a Certificate of Appealability.

On July 7, 2009, the Magistrate Judge issued a Report and Recommendations (doc. #27) recommending that a Certificate of Appealability be issued for all claims in the Petition for which review was sought due to the absence of any opposition by the Warden. On July 9, 2009, the Warden objected to this Report and Recommendations (doc. #28) to which Petitioner Nathan Perkins ("Perkins") responded (doc. #35.)

On August 25, 2009, the Magistrate Judge issued a Supplemental Report and Recommendations. (Doc. #36.) The Supplemental Report and Recommendations recommends that a Certificate of Appealability should be granted on Perkins' First and Second Grounds for

Relief for two reasons: because the Warden failed to contest the Motion for a Certificate of Appealability within the time allowed; and on the merits.

On August 26, 2009, the Warden sought leave to file objections to the Supplemental Report and Recommendations and withdraw the Objections to the Report and Recommendations. (Doc. #37.) The request to withdraw the Objections to the Report and Recommendations was made because these Objections were a “first and hasty draft” filed in error. Objections to the Supplemental Report and Recommendations were then filed on the same day. (Doc. #38.) Later that day, after the Objections were filed, the Motion was granted.

Perkins filed a Response to the Warden’s Objections on September 17, 2009. (Doc. #41). The Warden’s Objections to the Supplemental Report and Recommendations are, therefore, ripe for decision.

As required by 28 U.S.C. §636(b) and Federal Rules of Civil Procedure Rule 72(b), the District Judge has made a de novo review of the record in this case. Upon said review, the Court finds that the Warden’s Objections to the Magistrate Judge’s Supplemental Report and Recommendations are not well-taken, and they are hereby OVERRULED. The Magistrate Judge’s Supplemental Report and Recommendations is adopted in its entirety. Perkins is granted a Certificate of Appealability on his First and Second Grounds for Relief.

**DONE and ORDERED** in Dayton, Ohio, this Twenty-First day of September, 2009.

**s/Thomas M. Rose**

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THOMAS M. ROSE  
UNITED STATES DISTRICT JUDGE

Copies furnished to:  
Counsel of Record